

DATED 24<sup>th</sup> September 2020

**CHERWELL DISTRICT COUNCIL**

**-and-**

**OXFORDSHIRE COUNTY COUNCIL**

**-and-**

**WENDLEBURY DEVELOPMENTS LIMITED**

**-and-**

**DAVID LLOYD LEISURE LIMITED**

**PLANNING OBLIGATION BY DEED OF AGREEMENT**

**under section 106 of the Town and Country Planning Act 1990 (as amended) and  
section 111 of the Local Government Act 1972 and section 1 of the Localism Act  
2011**

**relating to land adjacent to Promised Land Farm, Wendlebury Road, Chesterton,  
Oxfordshire**

**Application 19/01740/HYBRID**



DATE

24<sup>th</sup> September

2020

**PARTIES:**

- (1) **CHERWELL DISTRICT COUNCIL** of Bodicote House Bodicote Banbury Oxfordshire OX15 4AA (**District Council**)
- (2) **OXFORDSHIRE COUNTY COUNCIL** whose principal office is at County Hall, New Road, Oxford OX1 1ND (**County Council**)
- (3) **WENDLEBURY DEVELOPMENTS LIMITED** (Company Registration Number 12185496) whose registered office is at 1 Willow Road, Brackley, Northamptonshire, United Kingdom, NN13 7EX (**Owner**)
- (4) **DAVID LLOYD LEISURE LIMITED** (Company Registration Number 01516226) whose registered office is at The Hangar, Mosquito Way, Hatfield Business Park, Hatfield, Hertfordshire AL10 9AX (**Conditional Purchaser**)

**1. INTRODUCTION**

- 1.1 The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 1.2 For the purposes of the Act the County Council is the county planning authority for the area which includes the Site and for the purposes of the Highways Act 1980, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the County Council is the local highway authority and the traffic authority for certain highways in the area which includes the Site.
- 1.3 The Owner is the freehold owner of the Site registered at the Land Registry under Title Numbers ON343626 and ON343634 as set out in the First Schedule subject to a unilateral notice in favour of the Conditional Purchaser but otherwise free from encumbrances
- 1.4 The Conditional Purchaser has a conditional contract to purchase part of the Site as set out in the First Schedule
- 1.5 Albion Land (2013) Limited (Company Registration Number 08266728) whose registered office is at Artemis House 4a Bramley Road, Mount Farm, Milton Keynes, MK1 1PT has submitted the Application to the District Council but notwithstanding this has no interest in the Site.
- 1.6 Pursuant to the Application, application has been made to the District Council for part outline and part full planning permission for the Development.
- 1.7 On 21 May 2020 the District Council's Planning Committee resolved to grant the Planning Permission subject, among other things, to the completion of this Agreement.
- 1.8 On 21 May 2020 the District Council's Planning Committee also resolved to grant planning permission in relation to an outline planning application on the Adjacent Land subject to completion of a separate planning obligation. That planning obligation provides for the payment of contributions and the construction of highway works, some of the provisions of which directly relate to this Agreement
- 1.9 The parties have agreed that it is necessary in planning terms to enter into this Agreement to mitigate the impact of the Development and make it acceptable with the intention that this Agreement may be enforced by the District Council and the County Council against the Owner, the Conditional Purchaser and their successors in title.

## NOW THIS AGREEMENT WITNESSES AS FOLLOWS

### OPERATIVE PART

#### 2. DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

<b>Act</b>	means the Town and Country Planning Act 1990 as amended
<b>Adjacent Land</b>	means the land in the approximate area edged blue on the Plan
<b>Application</b>	means the application for planning permission submitted to the District Council for the Development and allocated reference number 19/01740/HYBRID comprising an outline application for the Employment Land and a full application for the Health Club Land
<b>Commencement of the Development</b>	<p>occurs on and means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of:</p> <ul style="list-style-type: none"><li>• site clearance</li><li>• demolition work;</li><li>• archaeological investigations;</li><li>• investigations for the purpose of assessing ground conditions;</li><li>• remedial work in respect of any contamination or other adverse ground conditions;</li><li>• erection of any temporary means of enclosure;</li><li>• diversion and laying of services;</li><li>• the temporary display of site notices or advertisements</li></ul> <p>and <b>"Commence"</b> <b>"Commenced"</b> and <b>"Commencing"</b> or any other derivation of this term shall be construed accordingly;</p>
<b>County Contributions</b>	means the contributions payable to the County Council set out in the Third Schedule the Fourth Schedule and the Fifth Schedule



**Development**

means the development of the Site:

- (a) for up to 16,800m<sup>2</sup> gross internal area of B1 development; highway works (including provision of a new roundabout at the junction between Vendee Drive and Wendlebury Road); creation of a wetland and landscaped areas and associated infrastructure works; and
- (b) for a health and racquets club, associated access and car parking, outdoor tennis courts, air dome, outdoor swimming pool, spa garden and terrace, and associated landscaping;

pursuant to the Planning Permission.

**Due Date**

means the date on which any sum payable hereunder is required to be paid or if any sum is to be paid before an event the day before that event occurs

**Employment Land**

means the part of the Site shown shaded green on the Plan.

**Health Club Land**

means the part of the Site shown shaded pink on the Plan.

**Implementation**

means the carrying out of any development which implements the Planning Permission or any Qualifying Permission as set out in Section 56 of the Act and **Implement** and **Implemented** shall be construed accordingly

**Index Linked (Baxter)**

means adjusted according to any increase occurring between October 2019 and the date when the relevant payment is made in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) (1990 Series) as made available through the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

- (a) Index 1 Labour & Supervision 25%
- (b) Index 2 Plant & Road Vehicles 25%
- (c) Index 3 Aggregates 30%
- (d) Index 9 Coated Macadam & Bituminous Products 20%

or if at any time for any reason it becomes impracticable to compile the said composite index then an index compiled in such other manner as may be agreed in writing by the Owner and the County Council

**Index Linked (RPIX)**

means adjusted according to any increase occurring between October 2019 and the date when the relevant payment is made in the All Items Retail Price Index excluding mortgage

	interest (RPIX) published by the Office of National Statistics
<b>Interest</b>	means interest at 4% above the base lending rate of Lloyds Bank plc from time to time
<b>Occupation and Occupied</b>	means occupation or use for the purposes permitted by the Planning Permission or any Qualifying Permission but not including occupation for the purpose of construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and 'Occupy' shall be construed accordingly.
<b>Outline Obligation</b>	means an agreement made pursuant to Section 106 of the Act of even date with this Agreement and between the same parties but in relation to a planning application with reference number 19/01746/OUT on the Adjacent Land
<b>Plan</b>	means the plan reference 18002-LD-011 Rev. C attached to this Agreement at Appendix 1 showing the Employment Land shaded green and the Health Club Land shaded pink and the Adjacent Land edged blue.
<b>Planning Permission</b>	means the hybrid planning permission to be granted by the District Council pursuant to the Application
<b>Qualifying Application</b>	means an application for approval of Reserved Matters or any application under section 73 or section 96A of the Act or any appeal under section 78 of the Act relating to the Planning Permission (provided that the square meterage of B1 use within the Development does not exceed that originally permitted by the Planning Permission namely 16,800m <sup>2</sup> gross internal area with no more than 5,880m <sup>2</sup> being for B1(a) use)
<b>Qualifying Permission</b>	means an approval or planning permission as the case may be issued pursuant to a Qualifying Application
<b>Reserved Matters</b>	means details of any one or more of access, appearance, landscaping, layout and scale reserved under the terms of the Planning Permission or as applicable Qualifying Permission
<b>Site</b>	means the land against which this Agreement may be enforced as described in the First Schedule and shown edged red on the Plan
<b>Working Day(s)</b>	means any Monday to Friday (other than Bank or public holidays)

### 3. CONSTRUCTION OF THIS AGREEMENT

- 3.1 Where in this Agreement reference is made to any clause, paragraph or schedule or part of a schedule or recital or appendix such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or part of a schedule or recital in or appendix to this Agreement.

- 3.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 3.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 3.4 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 3.5 **"including"** means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and **"include"** shall be construed accordingly.
- 3.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.
- 3.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it and "statutory requirement" will be construed accordingly.
- 3.8 Reference to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District Council and the County Council as the case may be the successors to their respective statutory functions and any duly appointed employee or agent of the District Council and the County Council and or such successor.
- 3.9 The headings in this Agreement are inserted for convenience only and shall not affect the interpretation or construction of this Agreement

#### 4. **LEGAL BASIS**

- 4.1 This Agreement is made by deed pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 Section 278 of the Highways Act 1980 and all other enabling powers.
- 4.2 To the extent that the covenants, restrictions and requirements imposed under this Agreement fall within the terms of Section 106 of the Act the parties agree that such covenants, restrictions and requirements are planning obligations for the purposes of Section 106 of the Act and are enforceable (subject to the terms of this Agreement) by the District Council (in relation to the body of this Agreement) and by the County Council (in relation to the body of this Agreement and the Second Schedule, the Third Schedule, the Fourth Schedule and the Fifth Schedule) as planning authorities and shall bind the Site
- 4.3 To the extent that any of the covenants, restrictions and requirements contained in this Agreement are not planning obligations within the meaning of Section 106 of the Act they are entered into pursuant to the powers of Section 111 of the Local Government Act 1972, Section 1 Localism Act 2011, Section 278 of the Highways Act 1980 and all other enabling powers and are enforceable thereunder.

#### 5. **CONDITIONALITY**

- 5.1 The covenants, restrictions and obligations in the body of this Agreement and in the Second Schedule come into effect immediately on completion of this Agreement.
- 5.2 The covenants, restrictions and obligations in the Third Schedule and the Fourth Schedule and the Fifth Schedule to this Agreement are conditional upon:
  - 5.2.1 the grant of the Planning Permission; and

5.2.2 Implementation.

6. **OWNER'S COVENANTS**

- 6.1 The Owner covenants with the District Council as set out in the body of this Agreement; and
- 6.2 The Owner covenants with the County Council as follows:
  - 6.2.1 So as to bind the Site as set out in the body of this Agreement and in the Second Schedule and the Fifth Schedule; and
  - 6.2.2 So as to bind the Health Club Land as set out in the Third Schedule; and
  - 6.2.3 So as to bind the Employment Land as set out in the Fourth Schedule.

7. **CONDITIONAL PURCHASER'S CONSENT**

The Conditional Purchaser acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the interest of the Owner and the Conditional Purchaser shall be bound by the terms of this Agreement PROVIDED THAT the Conditional Purchaser shall have no liability under this Agreement unless it becomes a successor in title to the Owner to the Site in which case the Conditional Purchaser too will be bound by the obligations in this Agreement as a person deriving title from the Owner and/or the Conditional Purchaser takes possession of the Site or any part of it and/or undertakes any part of the Development on the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

8. **COUNCILS' COVENANTS**

- 8.1 The District Council covenants with the Owner to grant the Planning Permission on the same date as the date of this Agreement.
- 8.2 The County Council covenants with the Owner:
  - 8.2.1 Not to use any part of the County Contributions other than for the purposes for which they were paid (as set out in the Third Schedule and the Fourth Schedule and the Fifth Schedule) in such form and at such time as the County Council shall in its discretion decide or for such other purposes for the benefit of the Development as the Owner and the County Council shall agree in writing.
  - 8.2.2 Following written request by the Owner, to provide details of expenditure of the County Contributions that have been made to date PROVIDED THAT the Owner shall not request information as to expenditure of the County Contributions more frequently than on one occasion per year.
  - 8.2.3 Following written request from the person who paid the relevant County Contributions, to repay to that person the balance (if any) of the relevant County Contributions plus any accrued interest (which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law) which at the date of receipt of such written request has not been spent or committed for expenditure by the County Council PROVIDED THAT:
    - (a) such request shall not be made before the expiry of 10 years from the date of receipt of the final instalment of the relevant County Contributions or the expiry of 10 years from the Due Date of payment of the final instalment of the relevant County Contributions (whichever is later); and
    - (b) the County Contributions or part thereof which the County Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the County Council prior to that date;

## 9. MISCELLANEOUS

- 9.1 The Owner covenants with the District Council and with the County Council as follows:
  - 9.1.1 on completion of this Agreement pay to the District Council its reasonable legal costs of and in connection with this Agreement;
  - 9.1.2 on completion of this Agreement pay to the County Council its reasonable legal costs of and in connection with this Agreement;
  - 9.1.3 reimburse the District Council and the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with the enforcement of any of the provisions in this Agreement should the need for enforcement arise in the reasonable opinion of the District Council and/or the County Council;
- 9.2 on completion of this Agreement pay
  - 9.2.1 to the County Council the sum of £5,000 (Five Thousand Pounds); and
  - 9.2.2 to the District Council the sum of £1,000 (One Thousand Pounds);as a contribution towards the cost of monitoring and administering compliance with the covenants and obligations in this Agreement
- 9.3 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 9.4 This Agreement shall be registrable as a local land charge by the District Council.
- 9.5 Where the agreement, approval, consent or expression of satisfaction of any party is required under the terms of this Agreement such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed PROVIDED ALWAYS THAT where it is expressly provided that a matter will be in the discretion of a party then such provision will prevail
- 9.6 Following the Owner notifying the District Council and the County Council and the District Council and the County Council confirming in writing that they are satisfied of the performance and satisfaction of all the obligations contained in this Agreement the District Council shall forthwith note this in the Register of Local Land Charges in respect of this Agreement
- 9.7 If any provision of this Agreement is found to be invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the rest of this Agreement and insofar as reasonably practicable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality.
- 9.8 If prior to Implementation the Planning Permission and every Qualifying Permission expires or is quashed (and refused on redetermination) or revoked this Agreement shall cease to have effect PROVIDED ALWAYS that Implementation of the Planning Permission or the Qualifying Permission has not taken place save that this will not affect any antecedent liability of the parties
- 9.9 This Agreement shall not be enforceable against
  - 9.9.1 any statutory undertaker who acquires an interest in the Site for the purpose of providing services to or over the Site save that any provisions relating to works at the Site and provisions as to use shall be enforceable in respect of its interest in the relevant part of the Site
  - 9.9.2 the District Council or the County Council or any successor in title or assignee to either of them in so far as they hold an interest in any part of the Site as a result of the operation of this Agreement but without prejudice to any liability

of the District Council or County Council to comply with any obligation expressly given in this Agreement;

- 9.9.3 any person who has disposed of his entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest; and
- 9.9.4 anyone whose only interest in the Site or any part of it is in the nature of the benefit of an easement.
- 9.10 SAVE FOR the provisions of clause 9.12 nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission or a Qualifying Permission granted (whether or not on appeal) after the date of this Agreement.
- 9.11 If the District Council consents pursuant to a Qualifying Application to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under section 78 of the Act the covenants and provisions of this Agreement shall be deemed to bind the Qualifying Permission and to apply in equal terms to that Qualifying Permission SAVE THAT where a different section 106 obligation is agreed by the District Council and/or the County Council as being binding on any Qualifying Permission this obligation shall not apply to that permission if that separate section 106 obligation expressly states that it is in substitution for the obligations in this obligation.
- 9.12 If any permission or approval (including but not limited to a permission, variation or release of any condition contained in the Planning Permission) is granted for the Site that increases the square meterage of the B1 use permitted by the Planning Permission (to total more than 16,800m<sup>2</sup> gross internal area and/or if more than 5,880m<sup>2</sup> gross internal area is for B1(a) use), the Owner covenants that Implementation of that permission or approval shall not take place unless and until a separate satisfactory Agreement pursuant to Section 106 of the Act has been entered into with and by the District Council and the County Council

**10. WAIVER**

No waiver (whether expressed or implied) by the District Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

**11. NO FETTER**

Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the District Council or the County Council in the exercise of their respective functions in any capacity.

**12. CHANGE OF OWNERSHIP etc**

The Owner covenants with the District Council and the County Council to give the District Council and separately the County Council immediate written notice within 10 Working Days, of any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office if a company or usual address if not together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this clause shall not apply to any disposal of any part or parts of the Site for telecommunication services or utility requirements or to a statutory body or service supply company of an electricity substation gas governor pumping station water pumping station or other statutory service which have been constructed or installed in or on the Site.

13. **NOTIFICATION**

The Owner covenants and undertakes with the District Council and the County Council to notify the District Council and separately the County Council in writing no later than 5 Working Days prior to the occurrence of each of the following events:

13.1 the anticipated date of:

13.1.1 Implementation of the Development; and

13.1.2 Commencement of the Development

(and not to Implement/Commence until 5 Working Days have passed since service of the notice in question); and

13.2 the date of Commencement of the Development in relation to the Health Club Land; and

13.3 the date of first Occupation of the Health Club Land; and

13.4 the date of Commencement of the Development in relation to the Employment Land; and

13.5 the date of first Occupation of the Employment Land.

and to notify the District Council and the County Council in writing of the actual date of each such event referred to in Clauses 13.1.1 to 13.5 above no later than 5 Working Days after the event occurs

14. **INTEREST**

14.1 If any payment due under this Agreement is paid after the Due Date, Interest will be payable on the amount owed from the Due Date to the date of full payment.

14.2 Interest shall be calculated and accrue daily and shall be compounded monthly if any payment is made after the Due Date.

15. **VAT**

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable and the Owner shall pay to the District Council and separately to the County Council any Value Added Tax properly payable on any sums paid to them or works undertaken under this Agreement upon presentation of a valid Value Added Tax invoice addressed to the Owner

16. **NOTICE**

16.1 Any notice or notification to be given under this Agreement shall be sent

16.1.1 to the District Council to the Head of Development Management of the Council (reference 19/01740/HYBRID) at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA or to such other person at such other address as the District Council shall from time to time direct;

16.1.2 to the County Council to the Director for Planning & Place of the County Council (reference 19/01740/HYBRID) at County Hall, New Road, Oxford OX1 1ND or to such other person at such other address as the County Council shall from time to time direct; and

16.1.3 to the Owner to c/o Albion Land (2013) Limited, Artemis House, 4a Bramley Road, Mount Farm, Milton Keynes MK1 1PT or to such other address as the Owner shall direct from time to time.

16.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

- 16.2.1 if delivered by hand, at the time of delivery;
  - 16.2.2 if sent by recorded delivery, at the time delivery was signed for;
  - 16.2.3 if a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 16.3 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
- 16.4 Any notice or notification to be given pursuant to this Agreement shall be in writing and shall, unless otherwise agreed, be delivered by hand or sent by recorded post.

**17. DATA PROTECTION**

- 17.1 The Owner acknowledges and agrees that information as to compliance with obligations pursuant to this Agreement (including as to whether or not contributions have been paid) may be passed to:-
- 17.1.1 the District Council and the County Council so that they may revise their records including public records accordingly and/or monitor and audit compliance with this Agreement;
  - 17.1.2 persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that the recipients of such information may then disseminate it further; and
  - 17.1.3 any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000.

**18. JURISDICTION**

This Agreement is governed by and shall be interpreted in accordance with the law of England and the courts of England shall have exclusive jurisdiction to settle any dispute or claim.

**19. DELIVERY**

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed on the day and year first before written.



## **FIRST SCHEDULE**

### **Details of the Owner's and Conditional Purchaser's Interests and description of the Site**

Land adjacent to Promised Land Farm, Wendlebury Road, Chesterton, Oxfordshire OX25 2PA as shown edged red on the Plan the freehold being registered to the Owner with absolute title under title number ON343626 and with possessory title under title number ON343634.

The Conditional Purchaser has entered into a conditional agreement dated 5 July 2019 to purchase the Health Club Land which is protected by a Unilateral Notice against the Site and registered under title numbers ON343626 and ON343634

## SECOND SCHEDULE

### Highway Works

#### DEFINITIONS

In this Schedule the following additional definitions shall apply (and for the avoidance of doubt any definition which does not appear below shall be given the meaning allocated to it in the main body of this Agreement):

<b>"Access Works (Health Club Land)"</b>	the works identified in paragraph (1) (a) of the Annex to this Schedule and associated preparatory and ancillary works and amenity and accommodation works as set out in paragraphs (2) and (3) of the Annex to this Schedule
<b>"Hardstanding Works"</b>	the works identified in paragraph (1) (b) of the Annex to this Schedule together with associated preparatory and ancillary works and amenity and accommodation works as set out in paragraphs (2) and (3) of the Annex to this Schedule
<b>"Pedestrian Link Works"</b>	the works identified in paragraph 1 (c) of the Annex to this Schedule together with associated preparatory and ancillary works and amenity and accommodation works as set out in paragraphs (2) and (3) of the Annex to this Schedule
<b>"Realignment Works"</b>	the works identified in paragraph (1) (d) of the Annex to this Schedule together with associated preparatory and ancillary works and amenity and accommodation works as set out in paragraphs (2) and (3) of the Annex to this Schedule
<b>"Section 278 Agreement"</b>	an agreement pursuant to inter alia section 278 and as applicable section 38 of the Highways Act 1980 substantially in accordance with the template form attached at Appendix 5 which provides for the execution of the relevant element of the Works by the Owner at its own expense
<b>"Shared Pedestrian/Cycleway Works"</b>	the works identified in paragraph 1 (e) of the Annex to this Schedule together with associated preparatory and ancillary works and amenity and accommodation works as set out in paragraphs (2) and (3) of the Annex to this Schedule
<b>"Technical Audit Certificate"</b>	the certificate or letter issued by the County Council following its audit of the technical details of any of the Works submitted for approval to the County Council by the Owner
<b>"Works (Employment Land)"</b>	means the works set out in the Annex to this Schedule comprising:  (a) the Hardstanding Works; and  (b) the Pedestrian Link Works; and  (c) the Realignment Works; and  (d) the Shared Pedestrian/Cycleway Works

## COVENANTS

The Owner covenants with the County Council:

1. Not to cause or permit Commencement of the Development on the Health Club Land unless and until:
  - 1.1. there has been submitted to the County Council and approved by it in writing in principle drawings for the Access Works (Health Club Land) together with associated drawings and technical information set out in the County Council's Section 278 application form as adjusted from time to time
  - 1.2. there has been submitted to the County Council and approved by it in writing plans detailing the land to be dedicated (if any) following completion of the Access Works (Health Club Land) and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated
  - 1.3. the anticipated duration of construction of the Access Works (Health Club Land) has been agreed with the County Council together with the long stop date for completion of the Access Works (Health Club Land) and a commuted maintenance sum in respect of the cost of future maintenance and as applicable replacement of the Access Works (Health Club Land) has been agreed
  - 1.4. the Technical Audit Certificate in relation to the Access Works (Health Club Land) has been issued.
2. Not to cause or permit Occupation of the Health Club Land unless and until a Section 278 Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 1.1 – 1.4 above has been entered into by the Owner in respect of the Access Works (Health Club Land) together with all parties with an interest in any land to be dedicated further to the Section 278 Agreement and any mortgagee of such land has released it fully and effectively from its charge.
3. Not to cause or permit the Occupation the Health Club Land unless and until the Access Works (Health Club Land) have been completed (excluding any maintenance period) in accordance with the provisions of the Section 278 Agreement relating to the Access Works (Health Club Land).
4. Not to cause or permit Commencement of the Development on the Employment Land unless and until:
  - 4.1. there has been submitted to the County Council and approved by it in writing in principle drawings for the Works (Employment Land) together with associated drawings and technical information set out in the County Council's Section 278 application form as adjusted from time to time
  - 4.2. there has been submitted to the County Council and approved by it in writing plans detailing the land to be dedicated (if any) following completion of the Works (Employment Land) and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated
  - 4.3. the anticipated duration of construction of the Works (Employment Land) has been agreed with the County Council together with the long stop date for completion of the Works and a commuted maintenance sum in respect of the cost of future maintenance and as applicable replacement of the Works (Employment Land) has been agreed
  - 4.4. a Section 278 Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraph 4.1 – 4.3 above has been entered into by the Owner in respect of the Works (Employment Land) together with all parties with an interest in any land to be dedicated further to the Section 278 Agreement and any mortgagee of such land has released it fully and effectively from its charge.
5. Not to cause or permit the Occupation of the Employment Land unless and until the Works (Employment Land) have been completed (excluding any maintenance period) in accordance with the provisions of the Section 278 Agreement relating to the Works (Employment Land).

## ANNEX TO THE SECOND SCHEDULE

### (1) PRINCIPAL WORKS

The provision and construction of the following works ("**the Principal Works**")

- (a) **Access Works (Health Club Land)** - Works to enable the access to and from the Health Club Land as shown indicatively on Drawing Number 19539-21 (a copy of which is attached at Appendix 2)
- (b) **Hardstanding Works** – Hardstanding in a suitable location agreed in writing by the County Council to accommodate a bus shelter for a new single bus stop as shown indicatively on Drawing Number: 19539-18 Rev E (a copy of which is attached at Appendix 3).
- (c) **Pedestrian Link Works** – Provision of a pedestrian link between Wendlebury Road and the A41 north of the hotel development with associated crossing facilities as shown indicatively on Drawing Number: 19539-17 Rev B (a copy of which is attached at Appendix 4)
- (d) **Realignment Works** – Realignment of Wendlebury Road to form a standard roundabout between Vendee Drive Link Road and Wendlebury Road which shall also form access to the Employment Land as shown indicatively on Drawing No. 19539-18 Rev E (a copy of which is attached at Appendix 3).
- (e) **Shared Pedestrian/Cycleway Works** - Provision of a 3 metre shared pedestrian/cycleway facility along Wendlebury Road right up to the A41/Pioneer Way junction to can crossing including raised table treatment to give prioritisation to walking/cycling across side roads on Wendlebury Road as shown indicatively on Drawing Number 19539-18 Rev E (a copy of which is attached at Appendix 3) and Drawing Number 19539-17 Rev B (a copy of which is attached at Appendix 4) **SAVE THAT** where the County Council confirms in writing that localised width constraints exist in the area of Drawing Number 19539-17 Rev B (a copy of which is attached at Appendix 4) a width of at least 2.5m (rather than 3m) may be provided in agreement with the County Council. Where such width constraints exist, the County Council may agree in writing that street furniture (including light columns) may be retained within the width of the shared pedestrian/cycleway facility provided that the width available for walking/cycling does not fall below 2.5m.

### (2) PREPARATORY AND ANCILLARY WORKS

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Principal Works such alteration thereof) as the County Council shall consider requisite for the proper construction and functioning of the Principal Works including:-

- (a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works
- (b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- (c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works
- (d) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs

- (e) all kerbs islands verges and reservations including the grading and seeding of grassed areas
- (f) all measures necessary to ensure visibility for drivers at any bend or junction
- (g) all traffic signs road markings bollards and safety barriers
- (h) all tapers joints and reinstatements necessary where the Principal Works abut the existing highway

**(3) AMENITY AND ACCOMMODATION WORKS**

The provision and construction of all such amenity and accommodation works as the County Council shall consider requisite for the protection of the local environment and private and public rights and property in consequence of the Principal Works including:-

- (a) any earth bunds and/or planting necessary to screen the Principal Works
- (b) all fences gates hedges and other means of separation of the Principal Works from adjoining land
- (c) any necessary alteration of any private access or private or public right of way affected by the Principal Works
- (d) any necessary embankments retaining walls or other things necessary to give support to adjoining land

### THIRD SCHEDULE

#### Health Club Land Contributions

In this Schedule the following definitions shall have the following meanings (and for the avoidance of doubt any definition which does not appear below shall be given the meaning allocated in clause 2 of this Agreement):

**Health Club Strategic Highway Contribution**

means the sum of £179,346.30 (one hundred and seventy nine thousand three hundred and forty six pounds thirty pence) Index Linked (Baxter) towards provision of the western section of the proposed Bicester south east perimeter road or such other scheme that offers similar benefits

**Health Club Travel Plan Monitoring Fee**

means the sum of £1,240 (one thousand two hundred and forty pounds) Index Linked (RPIX) towards monitoring of the travel plan for the Health Club Land

1. The Owner covenants with the County Council to pay the Health Club Strategic Highway Contribution and the Health Club Travel Plan Monitoring Fee to the County Council prior to the first Occupation of any part of the Health Club Land.
2. The Owner covenants with the County Council not to cause permit or suffer Occupation on any part of the Health Club Land unless and until the Health Club Strategic Highway Contribution and the Health Club Travel Plan Monitoring Fee have been paid to the County Council.

## FOURTH SCHEDULE

### Employment Land Contributions

In this Schedule the following definitions shall have the following meanings (and for the avoidance of doubt any definition which does not appear below shall be given the meaning allocated in clause 2 of this Agreement):

<b>Employment Contribution</b>	<b>Strategic Highway</b>	means the sum of £265,957.44 (two hundred and sixty five thousand nine hundred and fifty seven pounds and forty four pence) Index Linked (Baxter) towards provision of the western section of the proposed Bicester south east perimeter road or such other scheme that offers similar benefits
<b>Employment Travel Plan Monitoring Fee</b>		means the sum of £2,080 (two thousand and eighty pounds) Index Linked (RPIX) towards monitoring of the travel plan for the Employment Land and the Adjacent Site

1. The Owner covenants with the County Council to pay the Employment Strategic Highway Contribution, and (if not already paid pursuant to the Outline Obligation) the Employment Travel Plan Monitoring Fee to the County Council prior to the first Occupation of any part of the Employment Land.
2. The Owner covenants with the County Council not to cause, permit or suffer Occupation on any part of the Employment Land unless and until the Employment Strategic Highway Contribution, and the Employment Travel Plan Monitoring Fee have been paid to the County Council.

## FIFTH SCHEDULE

### Highway Contributions

In this Schedule the following definitions shall have the following meanings (and for the avoidance of doubt any definition which does not appear below shall be given the meaning allocated to it in clause 2 of this Agreement):

<b>Public Transport Infrastructure Contribution</b>	means the sum of £10,000 (ten thousand pounds) Index Linked (Baxter) towards the provision of a bus shelter (including flag pole and information case)
<b>Public Transport Services Contribution 1</b>	means the sum of £75,000 (seventy five thousand pounds) Index Linked (RPIX) towards enhancements to public transport in the vicinity of the Site.
<b>Public Transport Services Contribution 2</b>	means the sum of £75,000 (seventy five thousand pounds) Index Linked (RPIX) towards enhancements to public transport in the vicinity of the Site.
<b>Public Transport Services Contribution 3</b>	means the sum of £75,000 (seventy five thousand pounds) Index Linked (RPIX) towards enhancements to public transport in the vicinity of the Site.
<b>Public Transport Services Contribution 4</b>	means the sum of £75,000 (seventy five thousand pounds) Index Linked (RPIX) towards enhancements to public transport in the vicinity of the Site.
<b>Public Transport Services Contribution 5</b>	means the sum of £75,000 (seventy five thousand pounds) Index Linked (RPIX) towards enhancements to public transport in the vicinity of the Site.
<b>Safety Improvement Scheme Contribution</b>	means the sum of £50,000 (fifty thousand pounds) Index Linked (Baxter) towards the costs of a highway safety improvement scheme in the vicinity of the A41/Vendee Drive roundabout

1. The Public Transport Infrastructure Contribution, Public Transport Services Contribution 1, Public Transport Services Contribution 2, Public Transport Services Contribution 3, Public Transport Services Contribution 4, Public Transport Services Contribution 5, and Safety Improvement Scheme Contribution (and the Employment Travel Plan Monitoring Fee under the Fourth Schedule) are the same contributions as are due to be paid pursuant to the Outline Obligation. It is agreed that if any of these payments have been made pursuant to the Outline Obligation then the payment in question will not also be due to be paid pursuant to the terms of this Agreement.
2. The Owner covenants with the County Council as follows:
  - 2.1 (if not already paid pursuant to the Outline Obligation) to pay to the County Council the Public Transport Services Contribution 1 and the Public Transport Infrastructure Contribution and the Safety Improvement Scheme Contribution prior to first



Occupation of the Site and not to cause, permit or suffer the first Occupation of any part of the Site unless and until the Public Transport Services Contribution 1, the Public Transport Infrastructure Contribution and the Safety Improvement Scheme Contribution have been paid to the County Council.

2.2 (if not already paid pursuant to the Outline Obligation) to pay to the County Council:

- 2.2.1 Public Transport Services Contribution 2 prior to the first anniversary of the date of the first Occupation of any part of the Employment Land;
- 2.2.2 Public Transport Services Contribution 3 prior to the second anniversary of the date of the first Occupation of any part of the Employment Land;
- 2.2.3 Public Transport Services Contribution 4 prior to the third anniversary of the date of the first Occupation of any part of the Employment Land; and
- 2.2.4 Public Transport Services Contribution 5 prior to the fourth anniversary of the date of the first Occupation of any part of the Employment Land.

2.3 Not to cause allow or permit any further Occupation of the Employment Land:

- 2.3.1 Twelve months or more from the date of first Occupation of the Employment Land unless and until Public Transport Services Contribution 2 has been paid to the County Council (unless already paid pursuant to the Outline Obligation); and
- 2.3.2 Twenty Four months or more from the date of first Occupation of the Employment Land unless and until Public Transport Services Contribution 3 has been paid to the County Council (unless already paid pursuant to the Outline Obligation); and
- 2.3.3 Thirty Six months or more from the date of first Occupation of the Employment Land unless and until Public Transport Services Contribution 4 has been paid to the County Council (unless already paid pursuant to the Outline Obligation); and
- 2.3.4 Forty Eight months or more from the date of first Occupation of the Employment Land unless and until Public Transport Services Contribution 5 has been paid to the County Council (unless already paid pursuant to the Outline Obligation)

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed on the day and year first before written.

**THE COMMON SEAL** of **CHERWELL**  
**COUNCIL** was affixed in the presence of:-



Authorised Signatory

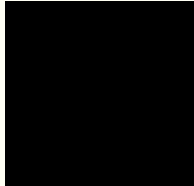


THE COMMON SEAL of OXFORDSHIRE  
COUNTY COUNCIL was affixed in the  
presence of:-



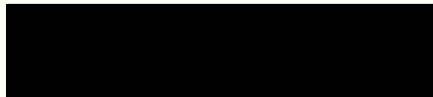
Authorised Signatory

EXECUTED AS A DEED by WENDLEBURY  
DEVELOPMENTS LIMITED acting by a  
director, in the presence of:



Director

Witness signature:



Witness name:

MATTHEW FARMER

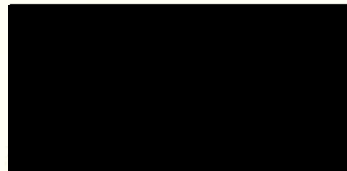
Address:

STEPTOE & JOHNSON UK LLP  
5 ALDERMANBURY SQUARE  
LONDON EC2V 7HR

Occupation:

SOLICITOR

EXECUTED AS A DEED by DAVID LLOYD  
LEISURE LIMITED acting by a director, in the  
presence of:



Director

Witness signature:



Witness name:

DAVID HUNTER

Address:

David Lloyd Club Support  
Mosquito Way  
Hatfield  
AL10 9AX

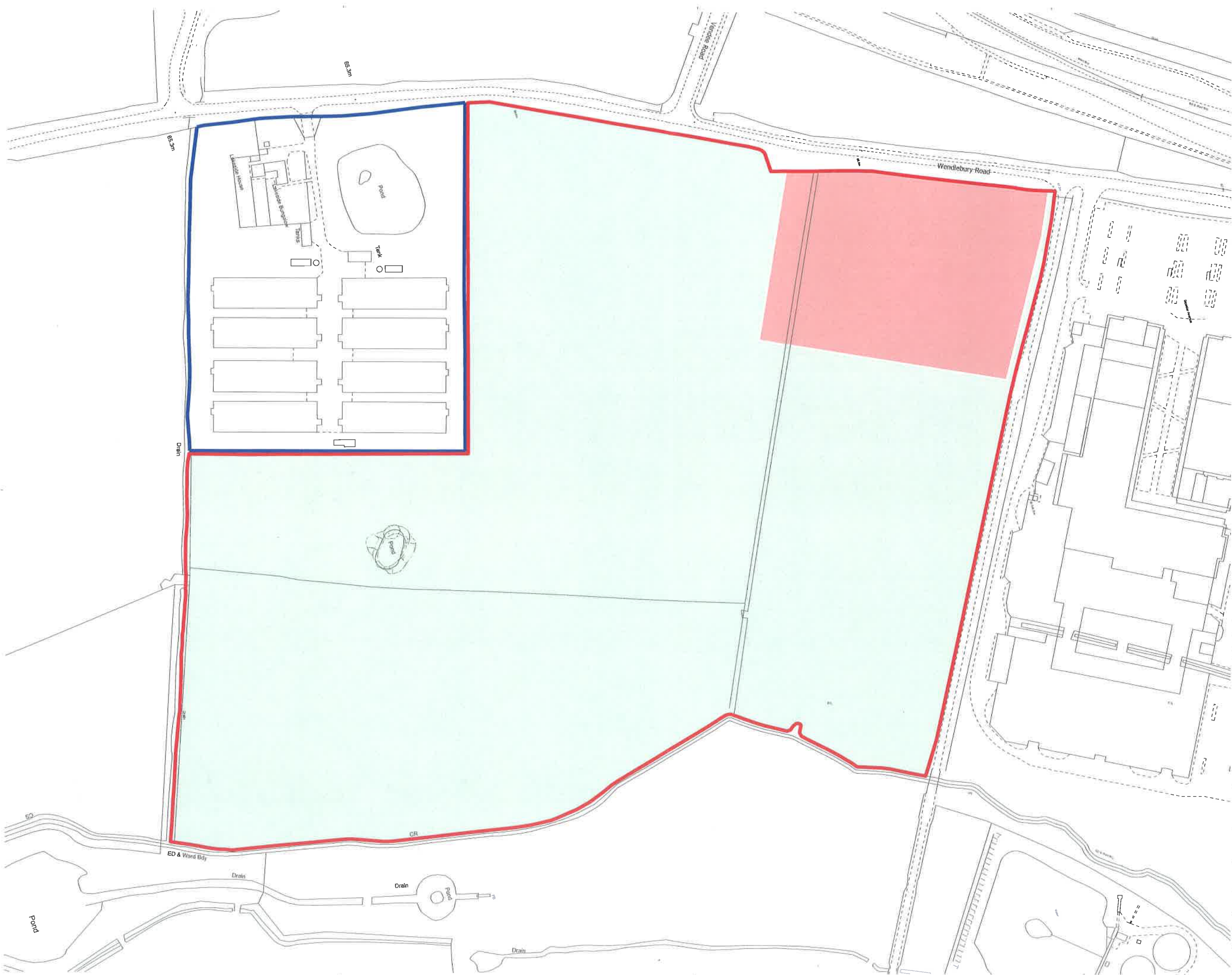
Occupation:

PROPERTY ADMIN

## **APPENDIX 1**

### **Site Plan**





NOTES

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C A Cornish & Associates Ltd Licence no LIG0908.

- Site
- Adjacent Land
- Health Club Land
- Employment Land



000 20319

C	Key added	CS	03/08/2020
B	Boundary line colour amended, shading added	CS	30/07/2020
A	Clarify site separation, Farm added	CS	16/07/2020
Rev	De		

enquiries@cornisharchitects.com  
www.cornisharchitects.com



cornisharchitects

Project Title: CATALYST BICESTER

Drawing Title: SITE BOUNDARY PLAN

Drawing Status: LEGAL AGREEMENT



Drawn By: C S Scale: 1:1000 @ A1 Date: 13/07/2020 Check By: S M

ALBION LAND

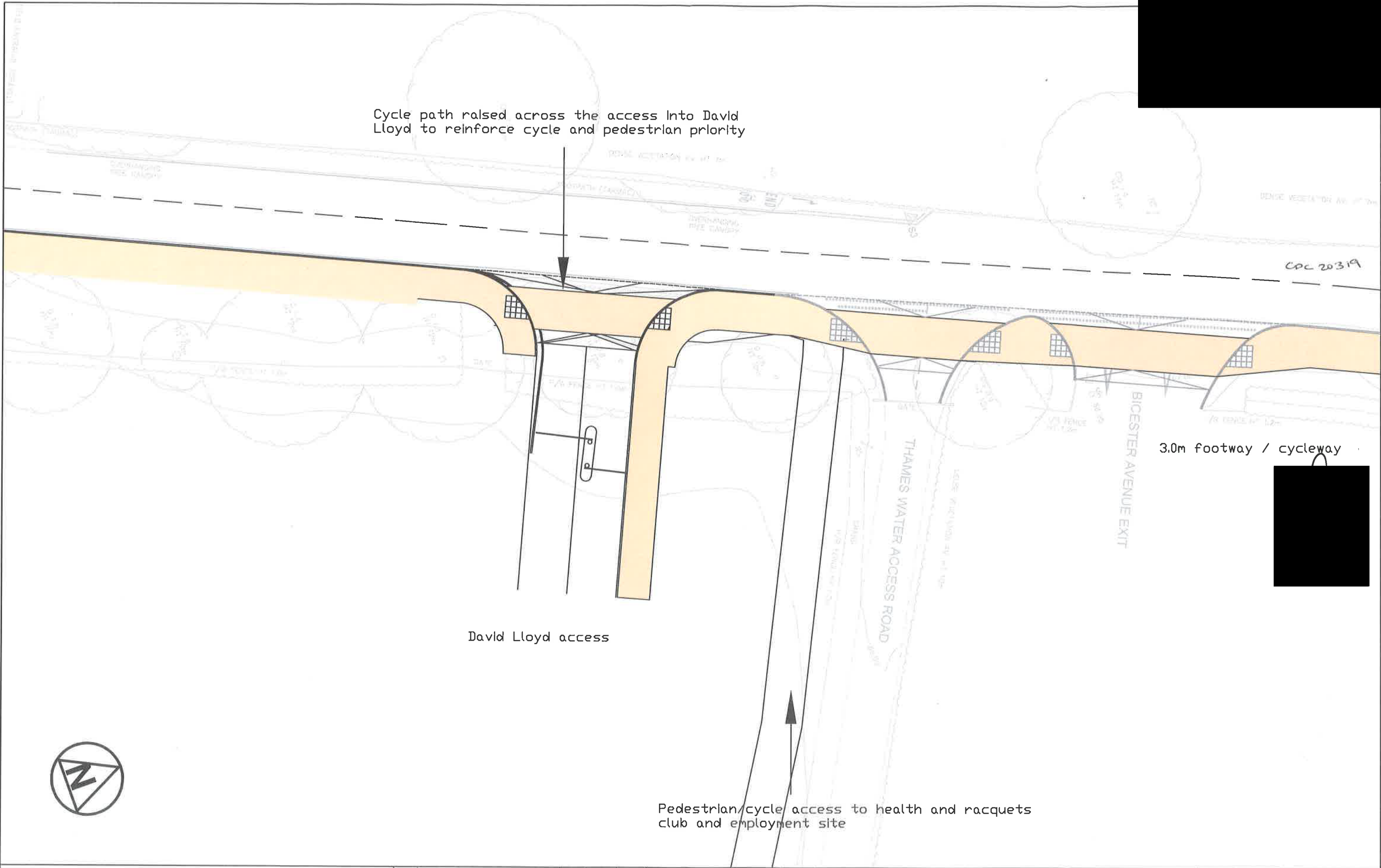
Drawing No. 18002 - LD - 011 Rev. C

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## **APPENDIX 2**

**Drawing Number 19539-21**





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 © David Tucker Associates

REV	DESCRIPTION	DRAWN	DATE	DRAWING STATUS	CHECKED BY	DATE



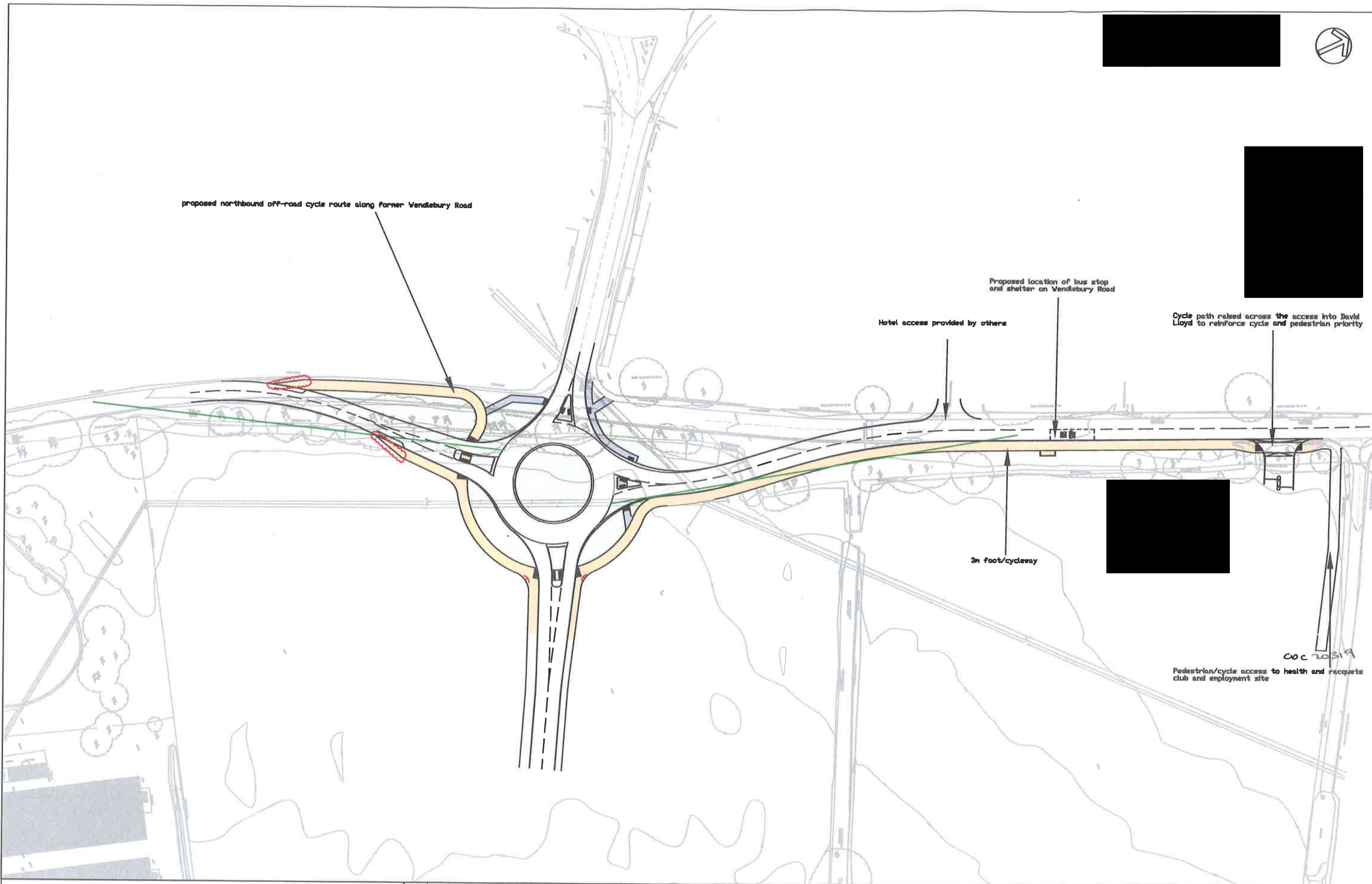
david tucker associates  
 transport planning consultants  
 Forester House, Dodons Lane,  
 Henley In Arden,  
 Warwickshire B95 5AW  
 Tel: +44(0)1564 793598  
 Fax: +44(0)1564 793983  
 www.dta-transportation.co.uk

JOB TITLE		CATALYST BICESTER		CLIENT		ALBION LAND	
DRAWING TITLE							
DAVID LLOYD ACCESS WORKS							
SCALE	DRAWN BY	DATE	DRAWING No	REVISION			
1/250 @ A3	BP	AUG2020	19539-21				

### **APPENDIX 3**

**Drawing Number 19539-18 Rev E**





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© David Tucker Associates

REV	DESCRIPTION	DRAWN	INITIALS	DATE	DRAWING STATUS	CHECKED BY	DATE

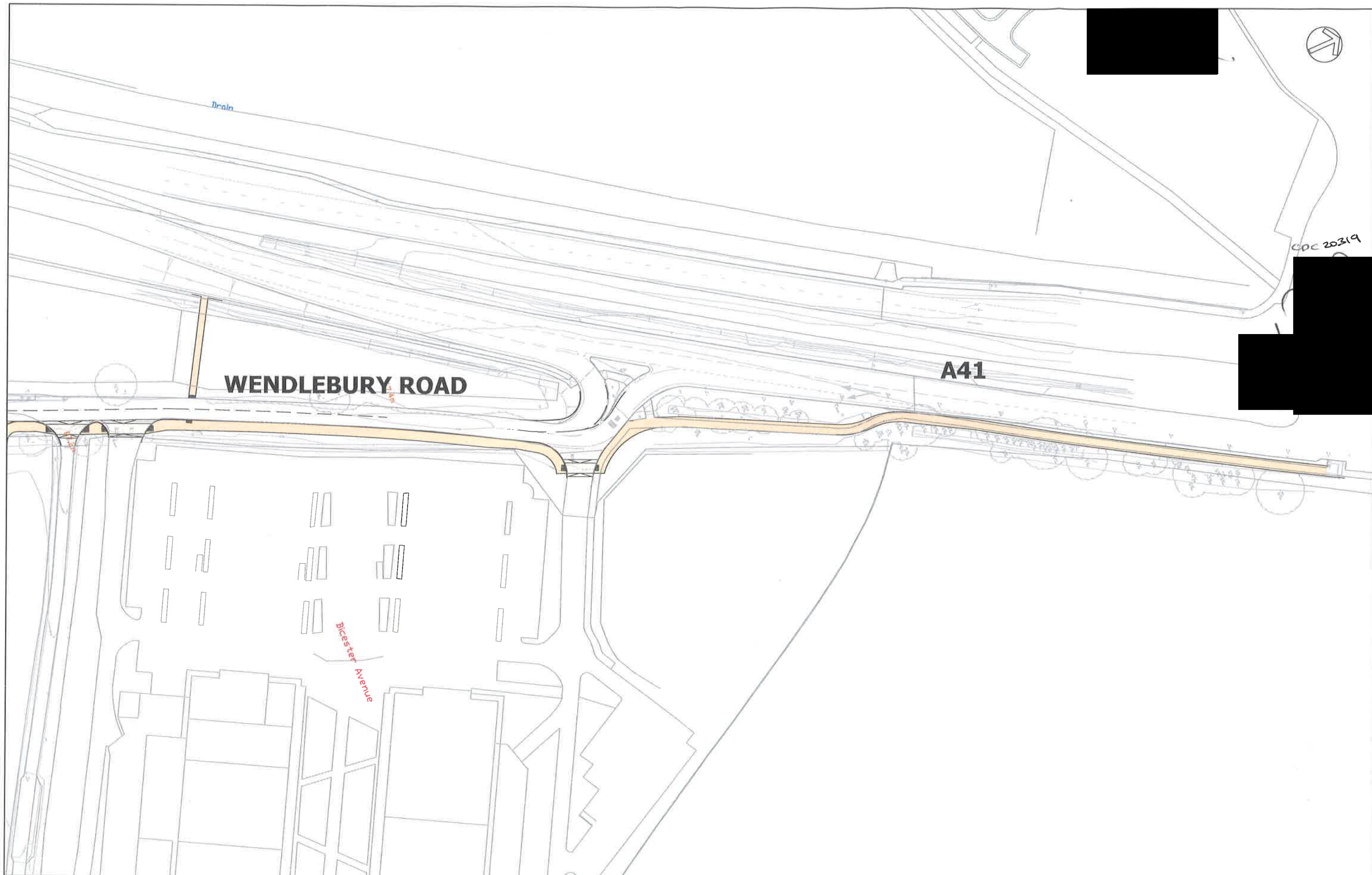


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Warwickshire B95 3AW  
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Fax: +44(0)1564 793983  
www.dta-transportation.co.uk

JOB TITLE		CATALYST BICESTER		CLIENT		ALBION LAND	
DRAWING TITLE							
DRAFT CYCLE LANE MODIFICATIONS							
SCALE		DRAWN BY		DATE		DRAWING No.	
1:5000A1		RJM		22/04/20		19539-18	
						REVISION	
						E	

**APPENDIX 4**

**Drawing Number 19539-17 Rev B**



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REV	DESCRIPTION	DRAWN	INITIALS	DATE	DRAWING STATUS	CHECKED BY	DATE



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transport planning consultants  
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Warwickshire B95 5AW  
Tel: +44(0)1564 793598  
Fax: +44(0)1564 793983  
www.dta-transportation.co.uk

JOB TITLE			CLIENT	
BICESTER CATALYST			ALBION LAND	
DRAWING TITLE				
INDICATIVE FOOT/CYCLE LINK TO PIONEER WAY				
SCALE	DRAWN BY	DATE	DRAWING No	REVISION
1: 500@A1	RJM	06/05/20	19539-17	B

## **APPENDIX 5**

### **Template Section 278 Agreement and Standard Conditions**

DATED \_\_\_\_\_ 20[ ]

OXFORDSHIRE COUNTY COUNCIL

-and-

(OWNER)

-and-

(DEVELOPER)

draft

-----  
Agreement relating to highway works at  
land adjacent to Promised Land Farm, Wendlebury Road, Chesterton,  
Oxfordshire  
to be undertaken by Developer  
-----

Sukdave Ghuman  
Head of Legal Services and Deputy Monitoring Officer  
Oxfordshire County Council  
County Hall  
New Road  
Oxford OX1 1ND



1.6 “the Dedication Plan” means the plan marked ‘B’ annexed to this Deed or such other plan as the Owner [the Developer and the Mortgagee] and the Council agree should be substituted for it

---

1.7 [“the Developer” means of/ whose registered office is at and its successors in title and assigns]

1.8 “the Development” means [ ]

1.9 “Implementation” means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and “implement” and “implemented” shall be construed accordingly

1.10 “including” means including without limitation and ‘include’ shall be construed accordingly

1.11 “Index-Linked” means adjusted according to any increase occurring between and the date of payment to the Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

Index 1	Labour & Supervision	25%
Index 2	Plant & Road Vehicles	25%







- 1.19 “the Standard Conditions” means the Council’s Standard Conditions for the Control of Highway Works in Conjunction with Development (2016 Edition) a copy of which is annexed to this Deed
- 1.20 “the Works” means the works specified in the Schedule
- 1.21 “the Works Plan” means the drawing(s) numbered [       ] annexed to this Deed
- 1.22 Any reference to an enactment includes any amendments to or modifications of it and the version of it for the time being in force shall apply
- 1.23 Headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation
- 1.24 References to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Deed
- 1.25 Where the context so requires:-
- 1.25.1 the singular includes the plural and vice versa
  - 1.25.2 the masculine includes the feminine and vice versa
  - 1.25.3 persons includes bodies corporate associations and partnerships and vice versa
- 1.26 Where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons

- 1.27 Where more than one party enters into any obligation or liability those parties are jointly and severally liable
- 1.28 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction

## 2. Preliminary

- 2.1 The Owner is the owner of freehold of the Site registered with absolute title under title number [ ] [subject to an Option in favour of the Developer (and/or) a Charge in favour of the Mortgagee but otherwise] free from incumbrances as the Owner hereby warrants
- 2.2 For the purposes of the 1990 Act the Council is the county planning authority for the area which includes the Site
- 2.3 For the purposes of the 1980 Act, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the Council is the highway authority and the traffic authority for certain highways in the area which includes the Site
- 2.4 [The (Owner/Developer) [has] submitted the Planning Application for the Development to the district planning authority
- 2.5 The Owner has/it has been agreed [by virtue of an agreement pursuant to Section 106 of the 1990 dated [ ] and made between [ ] that the

Development shall not be implemented [as therein defined] prior to the completion of this Deed and shall not be occupied prior to the completion of the Works in accordance with the Deed

2.6 The Off-Site Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act

2.7 It has been agreed between the Owner and the Council that in lieu of the Owner paying the cost of the Off-Site Works the Off-Site Works should be executed by the Owner in conjunction with the carrying out of the Development

2.8 This Deed (which the Council are satisfied will be of benefit to the public) is made under Sections 38 72 and 278 of the 1980, Act Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and all other enabling powers and is a planning obligation for the purposes of Section 106 of the 1990 Act entered into by the Owner the Developer and the Mortgagee in respect of the Site and enforceable by the Council

2.9 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable

manner as achieves the intention of the parties without  
illegality .

### 3. Covenants

### The Owner and the Developer covenant:-

- 3.1 not to cause or permit [any planning permission obtained for the Development/the Planning Permission to be implemented (save insofar as is necessary for the execution of the Works)] [any building forming part of the Development [to be occupied] [to open for business] before the Works have been completed
- 3.2 to execute the Works entirely at his/its own expense and to the satisfaction of the Council
- 3.3 in executing the Works to observe and perform all the obligations which fall on “the Developer” under the Standard Conditions and
- 3.4 to complete the Works not later than \_\_\_\_\_ and in any event within \_\_\_\_\_ from the date on which the Works started
- 3.5 not to commence the Works until the Maintenance Costs have been paid to the Council and to pay Maintenance Costs to the Council prior to commencing the Works
- 3.6 not to apply for the issue of the Certification of Completion until it has paid the Maintenance Costs to the Council
- 3.7 to give the Council written notice of any disposal of an interest in the Site and of the name and address of the new

owner and the date of the disposal within 14 days of such disposal

- 3.8 if any payment to be made to the Council is not paid on or before the due date for payment to pay interest at 4% per annum above the base rate from time to time of Lloyds Bank Plc from such due date to the date of payment<sup>1</sup>

4. **Adoption as Highway**

- 4.1 On the issue of a Certificate of Completion for the Works the whole of the land shown [hatched black] on the Dedication Plan (subject to modification as provided in clause 4.2) shall be deemed to have been dedicated as public highway (for all public highway purposes including use by mechanically propelled vehicles) and shall thereafter subject to Conditions 34 and 35 of the Standard Conditions be a highway maintainable at public expense
- 4.2 The Council may after consideration of the As-Built Drawings require the substitution of a modified dedication plan in which event that shall be agreed with the Owner [the Developer the Mortgagee] and the dedication as provided in clause 4.1 shall have effect in respect of the modified area
- 4.3 the Owner consents to the noting of the provisions of clause 4 of this Deed on the register under title number [ ]

5/6 **Act Reasonably**

Where a matter falls within a party's discretion that party shall

exercise such discretion in a reasonable and expeditious manner and shall give any requisite notice of that decision and any other notice provided for by this Deed (including the Standard Conditions) without undue delay

6/7 **[the Mortgagee**

The Mortgagee acknowledges that the Site is bound by the obligations contained in this Deed [and in the event that the dedication area is revised further to clause 4.2 the Mortgagee agrees that any part of the dedication area which is subject to its charge shall be released from such charge on dedication pursuant to clause 4.1 and the Mortgagee will execute such further documentation as may be required to effect this]

7/8 **Costs**

- 7.1 The Owner shall on completion of this Deed pay the reasonable legal costs of the Council in connection with the preparation and completion of this Deed [and [ ] towards the costs of administering and monitoring the provisions of this Deed relating to the Contribution]
- 7.2 The Owner will reimburse the Council in respect of all legal and administrative costs in connection with the enforcement of any of the provisions of this Deed including correspondence monitoring and site visits by or on behalf of the Council
- 7.3 The Owner will not claim any compensation in respect of the provision of this Deed

8 **Third Party Rights**

This Deed does not create any right enforceable by any person not a party to it except that it may be enforced by the successors in title and assigns of the parties and by any successor to the Council's statutory functions

9 **Notice**

Any notice or notification to be given to the Council under this Agreement shall be sent to the Director for Planning & Place of the Council (Ref ) County Hall, New Road, Oxford OX1 1ND or to such other person at such other address as the Council shall direct from time to time [and any notice or notification to be given to [ ] shall be sent to [ ] or to such other person at such address as the [ ] shall notify in writing to the Council from time to time

10 **No Waiver**

No alteration in the terms of this Deed nor any forbearance or forgiveness on the part of the Council in or in the extent or nature of any matter or thing concerning this Deed shall in any way release the Owner/the Developer/the Mortgagee from any liability under this Deed

11 **No Fetter**

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions in any capacity

12 **VAT**

All works undertaken pursuant to and all payments made in accordance with the terms of this Deed shall be exclusive of value added tax and the Owner shall pay the Council any value added tax properly payable on any sums paid to the Council or works undertaken under this Deed upon presentation of an appropriate value added tax invoice addressed to the Owner

13 **Jurisdiction**

This Deed is governed by and interpreted in accordance with the Law of England

14 **Delivery**

The provisions of this Deed shall be of no effect until this Deed has been dated

**IN WITNESS** whereof the parties hereto have executed this Deed as a deed the day and year first before written



## **SCHEDULE**

### **The Works**

(1) **Principal Works**

The provision and construction in the position indicated in principle on the Works Plan of the following works ("the Principal Works")

(a)

(b)

(c)

(2) **Preparatory and Ancillary Works**

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Works such alteration thereof) as the Council shall consider requisite for the proper construction and functioning of the Principal Works including:-

(a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works

(b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water

(c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works

- (d) all ducts cables columns lamps and other things  
necessary for the permanent lighting of the Principal  
Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the  
grading and seeding of grassed areas
- (f) all measures necessary to ensure visibility for drivers at  
any bend or junction
- (g) all traffic signs road markings bollards and safety  
barriers
- (h) all tapers joints and reinstatements necessary where the  
Principal Works abut the existing highway

(3) **Amenity and Accommodation Works**

The provision and construction of all such amenity and  
accommodation works as the Council shall consider requisite for  
the protection of the local environment and private and public  
rights and property in consequence of the Principal Works  
including:-

- (a) any earth bunds and/or planting necessary to screen the  
Principal Works
- (b) all fences gates hedges and other means of separation  
of the Principal Works from adjoining land
- (c) any necessary alteration of any private access or private  
or public right of way affected by the Principal Works
- (d) any necessary embankments retaining walls or other  
things necessary to give support to adjoining land

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THE COMMON SEAL of )  
was affixed to this Deed in the )  
presence of:- )

Director

Secretary

THE COMMON SEAL of )  
was affixed to this Deed in the )  
presence of:- )

Director

Secretary

THE COMMON SEAL of THE )  
OXFORDSHIRE COUNTY COUNCIL )  
was affixed to this Deed )  
in the presence of:- )

Head of Legal/ Authorised  
Officer

# OXFORDSHIRE COUNTY COUNCIL

## STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT

### CONTENTS

#### **General**

1. Interpretation
2. Relationship with Agreement
3. Communications with the Council
4. Approvals and Certificates etc
5. Council to act in Default or Emergency
6. Indemnity
7. Health and Safety
8. Payments

#### **Preliminaries**

9. Submissions to the Council
10. Undertakers' Apparatus
11. Authorisations
12. Bond
13. Monitoring and Other Costs
14. Insurance
15. Approval of Contractors
16. Pre-Conditions to Letting Works Contract

#### **Implementation of Works**

17. Commencement of Works
18. Pre-Conditions to Commencement of Works
19. General Conduct of Works
20. Inspection of Site and Materials
21. Errors and Defects
22. Suspension of Work
23. Variations and Additions
24. Prevention of Noise, Disturbance etc
25. Protection of Highway

#### **Completion and Consequential Matters**

26. Safeguarding of Completed Work
27. Completion of Works
28. Pre Completion – Clearance of Site and Stage 3 Road  
Safety Audit
29. Health and Safety File
30. Completion Certificate
31. Dedication as Highway
32. Easements
33. Noise Insulation
34. Remedying of Defects and Outstanding Works
35. Stage 4 Road Safety Audit
36. Release of Bond

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## **OXFORDSHIRE COUNTY COUNCIL**

### **STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT**

#### **GENERAL**

##### **1 INTERPRETATION**

In these Conditions:-

- 1.1 "the Agreement" means any agreement or other instrument by which these Conditions are applied.
- 1.2 "Authorisations" has the meaning given in Condition 11.1.
- 1.3 "the Bond" means the bond referred to in Condition 12.
- 1.4 "the Certificate of Completion" means the certificate issued under Condition 30.
- 1.5 "Contractor" includes an agent and any sub-contractor or agent of a main contractor.
- 1.6 "the Council" means the Oxfordshire County Council of County Hall New Road Oxford OX1 1ND and, so far as the context admits, includes any employee or contractors duly appointed by them.
- 1.7 "the Developer" means the person or persons by whom the Agreement requires the Works to be executed.
- 1.8 "including" means including without limitation or prejudice to the generality of any preceding description defining term phrase or word(s) and 'include' shall be construed accordingly.
- 1.9 "Safety Audit" means a safety audit in accordance with Oxfordshire Safety Audit Guideline as revised from time to time and incorporating H.D. 19/15 (Road Safety Audit Volume 5 design manual for roads and bridges)
- 1.10 "the Scheme of Works" means the matters specified in Conditions 9.1 – 9.3 as may for the time being have been varied and/or augmented under Condition 11 and/or Condition 23.
- 1.11 "statutory requirements" means the requirements of any enactment (being any act and any subordinate legislation as defined in the Interpretation Act 1978) national guidance or good practice guides.
- 1.12 "the Works" means the works which the Agreement requires to be executed in accordance with these Conditions and references to "the Works" includes each and every part of them.
- 1.13 The headings are for ease of reference and shall not affect the construction or interpretation of these Conditions.

1.14 References to the Construction (Design and Management) Regulations are to the Construction (Design and Management) Regulations 2015 as varied or replaced from time to time.

1.15 Any reference to any enactment includes any amendments to or modification of it and the version of it for the time being in force shall apply.

## **2 RELATIONSHIP WITH AGREEMENT**

These Conditions shall be construed together with and subject to the Agreement and in the event of any inconsistency between the Conditions and the Agreement the latter shall prevail.

## **3 COMMUNICATIONS WITH THE COUNCIL**

Any notice or other communication required by these Conditions to be given by the Developer to the Council shall be given in writing to the Council's Director for Environment & Economy at his main office at County Hall, New Road, Oxford OX1 1ND or to such other person and/or at such other place as he may identify in writing to the Developer.

## **4 APPROVALS AND CERTIFICATES**

4.1 No approval consent authorisation or payment as specified in Condition 4.3 shall create any contractual relationship between the Developer and the Council beyond that contained in the Agreement or operate in any way as a warranty or otherwise imply that the subject matter of such approval consent authorisation or payment is fit for its intended purpose nor shall it relieve the Developer or any professional adviser or contractor engaged in connection with the Works from their respective obligations to use all proper skill and care in respect of the Works.

4.2 The Council will not be liable for any loss damage or injury which the Developer may sustain arising from action taken in consequence of such approval consent authorisation or payment.

4.3 The matters referred to in Condition 4.1 are:

4.3.1 any approval or consent given by the Council in respect of the discharge by the Developer of its obligations under these Conditions; or any technical approval or consent issued by the Council in respect of the Works.

4.3.2 any authorisation given or implied by or under these Conditions in respect of anything done or to be done by the Developer on or in relation to any highway; or any payment made by the Developer to the Council under these Conditions.

## **5 COUNCIL TO ACT IN DEFAULT OR EMERGENCY**

5.1 In the event that either of the following circumstances occur:-

5.1.1 if the Developer shall be materially in default in respect of any of the provisions of the Agreement including these Conditions requiring work to be done or not done, or to be done in a particular manner or by a particular time and if such default continues after the Council have given to the Developer not less than 21 days' written notice of the steps they require to be taken to remedy such default; or

5.1.2 if it shall appear to the Council at any time during the course of execution of the Works that danger to persons or prejudice to the structure or stability of the public highway or of adjoining land exists or is imminent, and that it is not reasonably practicable to cause the Developer to take the necessary remedial steps forthwith;

the Council may take such steps themselves to the exclusion of the Developer and charge the expenses incurred (including their reasonable administrative costs) against the Developer.

5.2 Such expenses will be a debt due to the Council and recoverable by them by action or otherwise and for the avoidance of doubt the Council may recover such expenses under the Bond where the Council has taken such steps because the Developer is in default as provided in Condition 5.1.1 or where the Council has taken such steps in an emergency further to Condition 5.1.2 and in the latter case the Developer has failed to discharge the Council's expenses.

## **6 INDEMNITY**

The Developer shall indemnify the Council and keep them indemnified against;

6.1 all actions, liabilities, claims, costs and proceedings which may arise from the execution and completion of the Works (except insofar as may arise from the negligence or default of the Council) and from anything done or not done by the Developer or by its employees or contractors in connection with the Works;

6.2 all actions, liabilities, claims, costs and proceedings arising in connection with or incidental to or in consequence of the lawful use of the highway following upon the carrying out or completion of the Works under the Land Compensation Act 1973 or under regulations made pursuant to Section 20 of the Land Compensation Act 1973 (insulation against noise) and any grants made by the Council under such regulations in accordance with its established policy. The Council may by advertisement invite claims under the Land Compensation Act 1973 and under regulations made pursuant to Section 20 of that Act.



7 **HEALTH AND SAFETY**

The Developer shall act as the only client in respect of the Works for the purposes of The Construction (Design and Management) Regulations.

8 **PAYMENTS**

Where the Council seeks any payment further to these Conditions then save where there is express provision as to timing for payment such payment shall be due within 28 days of written request from the Council and if payment is not made within such 28 day period (or where applicable such other period as expressly provided) then interest at 4% per annum above the base rate from time to time of Lloyds Bank PLC shall be payable from the expiration of the 28 day period until the date of payment.

**PRELIMINARIES**

9 **SUBMISSIONS TO THE COUNCIL**

The Developer shall submit to the Council the information and other matters specified in column 1 below in accordance with the timetable set out in column 2 below and the notes set out in column 3 below: -

**Highway Matters**

9.1

Information	Timetable	Notes
<b>Detailed plans</b> (which shall include a layout plan to a scale of 1:1250 or 1:2500 according to whichever is the Ordnance Survey base scale for the area), drawings and specifications of the Works (including the drainage of them) and the materials to be used to comply with the relevant standards and specifications of the Council for the time being in force, together with such structural and drainage calculations as the Council may consider necessary having regard to the nature of the Works;	No later than <b>3 months before any tender is invited</b> for the execution of the Works	There shall be paid to the Council on the submission a sum equal to 0.4% of the estimated gross cost of the Works as identified in Condition 12

9.2

<p><b>A detailed programme</b> designed to ensure the orderly and timely execution and completion of the Work with the minimum of disturbance and disruption to use of the highway and occupiers of property and to facilitate the implementation of any such measures in respect of undertaker's apparatus as may be identified pursuant to Condition 10.</p>	<p>No later than <b>2 weeks after the acceptance of any tender</b> for the execution of the Works</p>	<p>Significant programme changes to be identified not less than 2 weeks prior to the change</p>
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9.3

<p>(a) <b>Measures for the control of vehicles and plant</b> to be used in the course of execution of the Works (including vehicles engaged on the transport of materials and equipment to and from the Works) and measures for traffic regulation in order to minimise and/or alleviate damage to the highway disturbance to occupiers of property and disturbance and disruption to use of the highway (including traffic congestion) ;and (b) traffic safety measures and measures including lights, guards, fencing and warning signs in order to protect the Works and/or for the safety and convenience of the public</p>	<p>No later than 2 weeks before the Works are expected to commence</p>	
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9.4

<p><b>Safety Audit Stage 2 Report</b></p>	<p>No later than <b>3 months before any tender is invited for the execution of the Works</b></p>	
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9.5

<p>Details in accordance with Condition 15 of the <b>persons proposed to be invited to tender.</b></p>	<p>No later than <b>1 month before any tender is invited</b> for the execution of the Works.</p>	
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## Other Matters

### 9.6

Details of the <b>bondsman</b> proposed to be given pursuant to Condition 12, together with any bills of quantities or tenders which the Developer wishes the Council to take into account under that Condition.	No later than <b>1 month before the Works are expected to commence.</b>	
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### 9.7

Details of the <b>insurances</b> required by Condition 14.	No later than <b>1 month before the Works are expected to commence.</b>	
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### 9.8

<p><b>Part 1</b>  <b>Noise survey and assessment and modelling</b> sufficient to establish whether any properties will be eligible for noise insulation according to regulation 3 or regulation 4 (as applied by the Council) of the Noise Insulation Regulations 1975 applying the requirements of the Design Manual of Roads and Bridges Volume 11 – Environmental Assessment and the Calculation of Road Traffic Noise 1988 to be undertaken by a noise expert approved by the Council.</p> <p><b>Part 2</b>          If the assessment concludes that there will be any property eligible for noise insulation to submit to the Council:</p> <p>(a) a map and list of all eligible properties.<sup>1</sup></p> <p>(b) a list of all occupiers and landlords</p> <p>(c) a survey and assessment for each eligible property of the work to be carried out to comply with requirements of the Noise Insulation Regulations 1975 and the specification for that work</p>	<p>No later than <b>1 month before the Works are expected to commence or earlier than 3 months before the Works are expected to commence.</b></p> <p>As above</p>	<p>Precise timing of survey to be agreed with the Council. Location of the survey/testing to be advised to the Council and if applicable adjusted to ensure regulatory compliance.</p>
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<sup>1</sup> Dwellings and other buildings used for residential purposes which will be not more than 300 metres from the edge of the carriageway of the highway after completion of the work.

9.9

<b>Condition survey</b> (comprising photographs) of land and highway adjoining and neighbouring the site of the Works together with such further areas as the Council may require.	<b>No later than 1 month before the Works are expected to commence.</b>	
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9.10

Notification of the <b>identity of the contractor</b> who has submitted a successful tender.	<b>No later than 2 weeks after the acceptance of any tender</b> for the execution of the Works.	
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In any particular case any information or matter may be submitted to the Council at such later time as the Council may consider expedient subject to the Council identifying such later time in writing.

## 10 UNDERTAKERS' APPARATUS

10.1 The Developer shall in preparing the Scheme of Works consult every undertaker within the meaning of the New Roads and Street Works Act 1991 whose apparatus or services lie in, on, under or over the site of the Works or may otherwise be affected by the Works (whether or not it is intended to connect into such services in connection with the Works), with a view to the identification and implementation of any measures considered necessary by the undertakers for the protection of, or otherwise in relation to, their apparatus or services, and shall be responsible for all dealings with such undertakers in respect of the implementation of such measures and for all costs payable to the undertakers in that behalf.

10.2 For the avoidance of doubt the Developer shall comply with statutory requirements relating to street works (as defined in the 1991 Act).

## 11 AUTHORISATIONS

11.1 Authorisations signifies all rights, approvals and consents and any other requisite action to enable the Works to be properly and lawfully executed and completed (in accordance with the Agreement including these Conditions) and the subsequent implementation and functioning of the Works including (but not so as to provide an exhaustive list of examples)<sup>2</sup>:-

11.1.1 planning permission for the Works;

11.1.2 authority for stopping up diversion or other alteration of any existing highway so far as necessary to enable the Works to proceed and / or be implemented and function;

<sup>2</sup> Examples may also include noise consent from district council

- 11.1.3 authority or agreement for stopping up (including relocating) any private access to any existing highways which is necessary in the opinion of the Council to enable the Works to proceed and / or be implemented and function<sup>3</sup> ;
  - 11.1.4 street works licence further to the New Roads and Street Works Act 1991;
  - 11.1.5 authorisation for any traffic regulation measures including prohibitions, restrictions and controls where necessary in the Council's opinion to enable the Works to proceed and/or to be implemented and function<sup>4</sup>; and
  - 11.1.6 any rights and easements which in the Council's opinion are necessary to ensure the permanent and satisfactory drainage or lighting of the Works such rights and easements to be in a form previously approved by the Council.
- 11.2 The Developer shall be responsible for ensuring that all Authorisations are secured in timely manner at its own cost.
- 11.3 Save in so far as any consent is expressly granted under the Agreement nothing in the Agreement shall prejudice or affect in any way the exercise by the Council of its powers and duties relating to any application for an Authorisation including the consideration and processing of an application, the carrying out of any procedural requirements (pursuant to any enactment or Council policies or protocols) and the determination as to whether or not the Authorisation should be made, granted or confirmed.
- 11.4 Any costs incurred by the Council relating to any application for an Authorisation - and any related matters shall be discharged by the Developer.
- 11.5 Where the procedures for securing any Authorisation entail consultation and in consequence of such consultation the Council determines that the Works / the Scheme of Works shall be varied and / or augmented then any reference to the Works and / or the Scheme of Works shall be construed as a reference to the Works and / or the Scheme of Works as so varied and / or augmented.
- 11.6 Forthwith on securing any Authorisation the Developer shall supply evidence of this to the Council to the Council's reasonable satisfaction.

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<sup>3</sup> This relates to for example Section 127HA.

<sup>4</sup> This is directed at securing any requisite TROs which are integral to the Works e.g. bus lanes and also there may be various works such as traffic calming and signals where consultation is mandatory.

## **12 BOND**

12.1 The Developer and a bondsman satisfactory to the Council shall enter into a Bond in such form as shall have been approved by the Council guaranteeing the execution and completion of the Works in accordance with the Agreement including these Conditions.

12.2 The amount of the Bond shall be

- 12.2.1. the gross cost of the Works (including any costs payable to undertakers pursuant to Condition 10) as then (being one month before the Works are proposed to be commenced) estimated by the Council and such estimate may take into account any bills of quantities prepared or tenders received by the Developer in respect of the Works and submitted by it to the Council; and
- 12.2.2. adjusted to take account of inflation for the duration of the Works (and subsequently) as reasonably estimated by the Council; and
- 12.2.3. adjusted to reflect the full costs that may be incurred by the Council as provided in Condition 5.1 (Council to act in default or emergency).

## **13 MONITORING AND OTHER COSTS**

13.1 The Developer shall pay to the Council in respect of the costs to be incurred by the Council in monitoring the execution and completion of the Works (and administration of the Agreement) a sum equal to 9% of the amount of the Bond, subject to a minimum payment of £2,150

Note: The provisions of Condition 27.2 also apply

13.2 The Developer shall pay to the Council legal costs reasonably incurred in connection with the drafting and completion of the Bond.

## **14 INSURANCE**

The Developer shall take out and maintain, until two years after the date on which the Council issues the Certificate of Completion (or if later the date on which all defects and outstanding works have been made good and completed as mentioned in Condition 33), such insurances satisfactory to the Council in the sum of £10million (or such higher sum as the Council may require) as may be appropriate to cover the liability of the Developer and of its employees and contractors in respect of any injury or damage to persons or property which may arise from or in connection with the execution and completion of the Works.

## **15 CONTRACTORS**

15.1 The Developer shall not employ any contractor or agent for the execution of the Works except such contractor or agent as shall be recognised by the Council as being of proven competence and good standing in the field of civil and electrical engineering and experienced in the type and scale of the work which is to be the subject of the contract, and for that purpose the Developer shall not invite tenders for the execution of the Works except from persons proposed to and approved in writing by the Council before any such tender is invited; The employment of a contractor or agent shall not remove or abate any obligation on the part of the Developer arising from the Agreement including these Conditions.

15.2 The Developer shall appoint a contractor to undertake the Works in compliance with the following:-

15.2.1 advertising/publication of the proposed contract for carrying out the Works sufficient to open up the market to competition and for the transparency and impartiality of the procurement procedure to be reviewed such advertising/publication to include the essential details of the contract to be awarded and of the award methodology;

15.2.2 awarding the contract for the Works further to competition applying such transparent and impartial procurement procedures and award methodology.

15.2.3 the Developer shall without cost to the Council supply such information as the Council may reasonably require to demonstrate compliance with this Condition.

## **16 PRECONDITIONS TO LETTING CONTRACT**

The Developer shall not let any contract for the execution of Works unless and until:-

16.1 The Scheme of Works has been approved by the Council; and

16.2 Safety Audit Stage 2 Report has been approved by the Council.

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## **IMPLEMENTATION OF THE WORKS**

### **17 COMMENCEMENT OF WORKS**

The Developer shall only undertake the Works at such times as have previously been approved by the Council

### **18 NO WORK PENDING APPROVALS ETC**

18.1 The Works shall not be commenced before the following have occurred:

- 18.1.1 the Council has issued written approval of the Scheme of Works;
  - 18.1.2 Safety Audit Stage 2 Report has been approved;
  - 18.1.3 evidence of all Authorisations have been supplied to the Council;
  - 18.1.4 the Bond duly executed as a deed by the Developer and the approved guarantor has been delivered to the Council;
  - 18.1.5 the costs referred to in Condition 13 have been paid to the Council;
  - 18.1.6 the Council has given its written approval to the insurances referred to in Condition 14;
  - 18.1.7 the noise survey assessment and modelling in accordance with Condition 9.8 has been supplied to the Council and if appropriate the information referred to in the second part of that Condition has been supplied to the Council
  - 18.1.8 the surveys referred to in Condition 9.9 (condition survey) has been supplied to the Council.
- 18.2 The Developer must have readily available at the site of the Works a copy of the insurances and approved Scheme of Works and shall retain them at the site for the duration of the Works and produce them to any representative of the Council on request.

## **19 GENERAL CONDUCT**

- 19.1 The Developer shall execute and complete the Works in compliance with the approved Scheme of Works, in a sound and workmanlike manner with proper materials and in accordance with good engineering practice and in compliance with all statutory requirements and the provisions of the Agreement including these Conditions.
- 19.2 Without prejudice to the generality of Condition 6.2 and Condition 19.1 the Developer shall provide the Council with such assistance, information and documentation as the Council shall require to comply with any obligations under the Noise Insulation Regulations 1975 including assistance in responding to any claims made under Regulation 13 of those Regulations.



**20 MONITORING OF SITE AND MATERIALS**

20.1 The Developer shall at all reasonable times give to the Council free access to every part of the Works and shall permit them to monitor them and inspect all materials used or intended for use in the Works.

20.2 Where the Council require any such materials to be tested the Developer shall reimburse the Council the reasonable cost of such testing.

**21 ERRORS AND DEFECTS**

If in the course of execution of the Works it shall appear to the Council:

21.1 that any error has arisen in the position, levels, dimensions or alignment of the Works; or

21.2 that any work carried out or materials used for the purpose of the Works are defective to such extent as to prejudice in any respect the structure, stability, durability or subsequent functioning of the Works; or

21.3 that any damage has occurred in respect of the Works; or

21.4 that in any other respect the Works are not in accordance with the Scheme of Works;

and the Council notify the Developer in writing of this then the Developer shall, at its own expense and to the satisfaction of the Council, forthwith take such remedial steps as the Council shall specify in the notice. For the avoidance of doubt this Condition is without prejudice to Condition 19.

**22 SUSPENSION OF WORK**

If in the opinion of the Council some part of the Works ought not properly to be commenced or continued by reason either of:-

22.1 the dependence of that part on the completion of remedial steps specified in a notice given under Condition 21; or

22.2 adverse weather conditions such as to prejudice the structure or stability of that part if executed under those conditions;

the Developer shall on the written order of the Council suspend the progress of that part of the Works for such time or times and in such manner as the Council may consider necessary, and shall during such suspension properly protect and secure the Works so far as is necessary in the opinion of the Council.

## **23 VARIATIONS AND ADDITIONS**

In the event that any of the following circumstances arising in the course of execution of the Works,;-

- 23.1 if discovery is made of adverse ground conditions or artificial obstruction or any other unforeseen factor which in the opinion of the Council necessitate a modification of the Works to avoid or compensate for such conditions, obstruction or other factor in the interests of the satisfactory completion and subsequent functioning of the Works; or
- 23.2 if it shall appear to the Council requisite, in accordance with good engineering practice and to ensure satisfactory completion and subsequent functioning of the Works that any work or materials should be added, or that any such work or materials proposed by the Developer to be done or used should be omitted or changed; or
- 23.3 if it shall appear to the Council expedient that any obligation arising from the approved Scheme of Works should be deferred by reason of delay incurred by the Developer arising from some cause not within the Developer's control; or
- 23.4 otherwise if in a particular case the Developer and the Council so agree;

the Scheme of Works shall be varied and/or augmented in manner notified in writing by the Council to the Developer, and in the application of these Conditions any reference to the Scheme of Works shall be construed as a reference to the Scheme of Works as so varied and/or augmented.

## **24 PREVENTION OF NOISE, DISTURBANCE ETC**

- 24.1 All work shall be carried out without unreasonable noise and disturbance and in such manner as not to interfere unnecessarily or unreasonably with the use and enjoyment of property adjoining or near the Works by their owners and occupiers.
- 24.2 Without prejudice to the generality of Condition 24.1, no work shall be carried on between the hours of 8.00pm and 7.00am the following day or on any Sunday or public holiday except insofar as:-
  - 24.2.1 any operations are necessary to avoid disruption to or for the control of traffic on any highway; or
  - 24.2.2 any work is unavoidable or absolutely necessary for the safety of life or property or the safety of the Works; or
  - 24.2.3 the Council have in writing otherwise agreed.

## **25 PROTECTION OF HIGHWAY**

- 25.1 Insofar as the Works affect in any respect the existing highway such part shall be executed with the minimum of disturbance to that highway and traffic using that highway consistent with the work in hand.
- 25.2 In the event of it appearing to the Council at any time that such disturbance has occurred or is likely to occur to such extent as to prejudice the structure of the highway or the safety of users the Developer shall forthwith take such remedial steps as the Council may require.
- 25.3 Prior to the commencement of the Works the Developer will provide suitable vehicle and wheel cleaning apparatus and ensure that such apparatus is maintained in good and useable condition and used by all vehicles immediately before leaving the site of the Works to prevent mud or other materials being deposited on the adjoining existing highway.
- 25.4 In the event of Developer receiving any complaint it will promptly notify the Council.

## **26 SAFEGUARDING OF COMPLETED WORK**

The Developer shall until the Council have issued the Certificate of Completion take all steps necessary to protect and maintain those parts of the Works which have been executed, so that upon substantial completion of the whole of the Works every part of the Works is in a sound and workmanlike condition and free from any damage and any material wear and tear.

## **COMPLETION AND CONSEQUENTIAL MATTERS**

### **27 COMPLETION OF WORKS**

- 27.1 The Works shall be executed and completed within such period as the Agreement may define (whether by duration or by reference to a specified date or both), provided that in the event of delay to the work arising from some cause not within the Developer's control the Developer shall be entitled to a reasonable extension of such period.
- 27.2 Without prejudice to any right or remedy of the Council, the Council may at any time by notice to the Owner permit an extension of time as the Council shall in its discretion determine and the Developer shall pay within 14 days of demand such additional monitoring fees (in addition to that provided for in Condition 13 ) as is necessary to reimburse to the Council the additional cost incurred in monitoring the Works by reason of the grant of such extension of time

## **28 PRE COMPLETION - CLEARANCE OF SITE AND STAGE 3 SAFETY AUDIT**

- 28.1 On substantial completion of the Works the Developer shall clear away and remove from the site of the Works all plant, surplus material, rubbish and temporary works and items of every kind, and shall leave the whole of the site of the Works clean and in a workmanlike condition to the satisfaction of the Council.
- 28.2 On substantial completion of the Works (and clearance of the site of the Works) the Developer shall lodge a stage 3 Safety Audit report together with the 'Designer's response' with the Council and the Developer shall execute and complete all works as advised by the Council arising from the Safety Audit recommendations.

## **29. HEALTH AND SAFETY**

- 29.1 The Developer shall furnish to the Council the Health and Safety File prepared in accordance with Interim Advice Note 105/08 - Implementation of Construction (Design and Management) 2007 issued by the Highways Agency (now Highways England) as revised and/or replaced from time to time. The Health and Safety File shall include detailed plans and drawings showing the Works as the same have actually been executed and completed and the Developer shall at his own cost ensure that the Council shall not be prevented by copyright or otherwise from reproducing such plans and drawings or part of them as the Council may require for purposes relating only to the Works and the highway and the Developer shall furnish satisfactory evidence to the Council that this has been done. The plans and drawings furnished under this Condition shall be no less detailed than the plans and drawings submitted under Condition 9.1 unless the Council shall in writing otherwise agree.

## **30. COMPLETION CERTIFICATE**

Subject always to prior compliance with the pre completion requirements (Condition 28) and with Condition 29 the Council shall issue the Certificate of Completion forthwith if the Council is satisfied that the Works (save for such minor outstanding works as the Council shall agree) have been completed in accordance with the Agreement including these Conditions

## **31. DEDICATION AS HIGHWAY**

Upon the issue of the Certificate of Completion unless the Agreement provides otherwise the whole of the land comprised in the Works (so far as not already forming part of the public highway and excluding such part as the Developer and the Council may in writing agree) shall be deemed to have been dedicated as public highway and shall thereafter subject always to compliance with Conditions 34 & 35 be a highway maintainable at public expense.

## **32. EASEMENTS**

32.1 The Developer shall forthwith following the issue of the Certificate of Completion:-

32.1.1 transfer to the Council all those rights and easements (so far as the same do not at that time already subsist in favour of the Council) referred to in Condition 11.1.6; and

32.1.2 grant to the Council any easement which in the Council's opinion is necessary to ensure the permanent and satisfactory drainage or lighting of the Works in respect of any land which is retained by the Developer and such easement shall be in a form previously approved by the Council and the Developer will procure that any person with an interest in the relevant land joins in the deed of easement for the purpose of consenting to and confirming such easement.

32.2 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising from any such transfer or grant of easement.

### **33. NOISE INSULATION**

The Developer shall within 1 month after the opening of the Works to public traffic supply to the Council an update of the information required pursuant to part 2 of Condition 9.8 (noise survey assessment and modelling- map lists and works) which relates to all eligible properties at the date of the opening of the Works to public traffic.

### **34. REMEDYING OF DEFECTS AND OUTSTANDING WORKS**

34.1 If at any time during the period of two years following the date on which the Council issue the Certificate of Completion:-

34.1.1 any defect in the Works becomes manifest (not being a defect arising solely from normal use by the public as a highway or from accidental or wilful damage by any third party); or

34.1.2 the Developer shall fail to complete any of the outstanding works mentioned in Condition 30 (minor outstanding Works on issue of Certificate of Completion) and the Council notify the Developer in writing of this

then the Developer shall at his own expense cause such defect to be made good or outstanding works to be completed (as the case may be) to the satisfaction of the Council.

34.2 Forthwith on receipt of any notification from the Council further to Condition 34.1 the Developer will agree with the Council the timing of the carrying out of such remedial or outstanding works and unless otherwise agreed shall secure their completion within one month of receipt of such notification (except in the event of delay

arising from some cause not within the Developer's control when the Developer shall be entitled to a reasonable extension of time).

**35. STAGE 4 ROAD SAFETY AUDIT**

35.1 The Council may require the Developer to carry out a Safety Audit Stage 4 at any time within 36 months from the opening of the Works and to lodge the report with the Council together with the "Designer's response" within 2 months and the Council shall notify the Developer of all works required to be undertaken arising from the Safety Audit recommendations

35.2 In the event that notification of works is given by the Council further to Condition 35.1 prior to the full release of the Bond the Developer shall execute and complete all the works as advised by the Council. The Developer will agree with the Council the time that he will be carrying out such works and unless otherwise agreed shall secure their completion within 1 month of receipt of such notification (except in the event of delay arising for some cause not within the Developers control, when the Developer shall be entitled to a reasonable extension of time).

35.3 In the event that notification of works is given by the Council further to Condition 35.1 subsequent to the full release of the Bond the Developer shall pay to the Council within 28 days of written request from the Council the costs incurred or to be incurred by the Council in carrying out such works.

**36. RELEASE OF BOND**

36.1 Upon the issue of the Certificate of Completion the Bond shall be deemed to be released by eighty per cent (80%) of its original value;

36.2 The Bond shall be deemed to be fully discharged at the latest of the following:

36.2.1 the date two years after the date on which the Council issue the Certificate of Completion; and

36.2.2 the date on which all defects and outstanding works have been made good and completed as referred to in Condition 34; and

36.2.3 the date on which all works have been completed as referred to in Condition 35.2

36.2.4 the Council have recovered their full expenses in all cases where Condition 5 applies (Council may act in default or emergency);

36.2.5 the date on which the Council have received the transfers or grants further to Condition 32;

36.3 Conditions 36.1 and 36.2 are without prejudice to the Council's absolute discretion from time to time upon application of the Developer to release the Bond to an extent commensurate with

the proportion of the Works that have been executed and completed at such time.

